

House Judiciary Committee Amendment No. 1

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1337

House Bill No. 199

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 11, Part 1, is amended by adding the following as a new section:

(a) In addition to the factors set out in Tennessee Code Annotated, Section 40-11-118, in making a decision concerning the amount of bail required for the release of a defendant who is arrested for any criminal offense defined in Tennessee Code Annotated, Title 39, Chapter 13, in which the alleged victim of the offense is a family or household member as defined in Tennessee Code Annotated, Section 36-3-601, or is in violation of an order of protection as authorized by Tennessee Code Annotated, Title 36, Chapter 3, Part 6, the magistrate shall review the facts of the arrest and detention of the defendant and determine whether the defendant:

- (1) Is a threat to the alleged victim or other family or household member;
- (2) Is a threat to public safety; and
- (3) Is reasonably likely to appear in court.

(b) Before releasing a person arrested for or charged with an offense specified in subsection (a), or a violation of an order of protection, the magistrate shall make findings on the record if possible concerning the determination made in accordance with subsection (a) of this section and may impose conditions of release or bail on the defendant to protect the alleged victim of any such offense and to ensure the

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appearance of the defendant at a subsequent court proceeding. The conditions may include:

- (1) An order enjoining the defendant from threatening to commit or committing specified offenses against the alleged victim or other family or household member;
 - (2) An order prohibiting the defendant from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, either directly or indirectly;
 - (3) An order directing the defendant to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
 - (4) An order prohibiting the defendant from using or possessing a firearm or other weapon specified by the magistrate;
 - (5) An order prohibiting the defendant from possession or consumption of alcohol or controlled substances; and
 - (6) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the defendant in court.
- (c) If conditions of release are imposed, the magistrate shall:
- (1) Issue a written order for conditional release;

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(2) Immediately distribute a copy of the order to the law enforcement agency having custody of the defendant; and

(3) Provide such law enforcement agency with any available information concerning the location of the victim in a manner that protects the safety of the victim.

(d) The law enforcement agency having custody of the defendant shall provide a copy of the conditions to the defendant upon his or her release. Failure to provide the defendant with a copy of the conditions of release does not invalidate the conditions if the defendant has notice of such conditions.

(e) If conditions of release are imposed without a hearing, the defendant may request a prompt hearing before the court having jurisdiction of the offense for which the defendant was arrested or is charged to review the conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions. Punishment for a violation of any condition of release shall be as provided by law.

(f) When a defendant who is arrested for or charged with an offense specified in subsection (a) or with a violation of an order of protection is released from custody, the law enforcement agency having custody of the defendant shall:

(1) Use all reasonable means to immediately notify the victim of the alleged offense of the release; and

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(2) Furnish the victim of the alleged offense at no cost a certified copy of any conditions of release.

(g) Release of a defendant who is arrested for or charged with a crime specified in subsection (a) or with a violation of an order of protection shall not be delayed because of the requirements of subsection (f) of this section.

SECTION 2. Tennessee Code Annotated, Section 36-3-604, is amended by deleting the final sentence of subsection (a).

SECTION 3. Tennessee Code Annotated, Title 36, Chapter 3, Part 6, is amended by adding the following as a new section:

Section____. Notwithstanding any other provision of law to the contrary, the petitioner shall not be required to pay any filing fees, litigation taxes or any other costs associated with the filing, issuance or enforcement of an order of protection authorized by this part upon the filing of the petition. The judge shall assess clerk's fees at the hearing of the petition or upon dismissal of the petition. No litigation taxes shall be collected.

SECTION 4. Tennessee Code Annotated, Section 40-35-303, is amended by adding the following appropriately lettered new subsections:

() In determining whether a person convicted of any criminal offense defined in Tennessee Code Annotated, Title 39, Chapter 13, in which the victim of the offense is a family or household member, as defined in Tennessee Code Annotated, Section 36-3-

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601, should be granted probation, the court shall consider the safety and protection of the victim of such offense and of any other member of the victim's family or household.

() If the court grants probation to a person convicted of an offense specified in the above subsection, it may condition such probation on compliance with one (1) or more orders of the court including, but not limited to:

(1) Enjoining the perpetrator from threatening to commit or committing acts of violence against the victim or other household members.

(2) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting or otherwise communicating, either directly or indirectly, with the victim;

(3) Requiring the perpetrator to stay away from the residence, school, place of employment or a specified place frequented regularly by the victim and by any designated family or household member.

(4) Prohibiting the perpetrator from possessing or consuming alcohol or controlled substances; and

(5) Prohibiting the perpetrator from using or possessing a firearm or any other specified weapon and requiring the perpetrator to surrender and forfeit any weapon currently possessed.

SECTION 5. This act shall take effect July 1, 1995, the public welfare requiring it.